

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Martin S. Rood,

Plaintiff,

VS.

Arthur F. Nelson; Don Foster Scoggins; Jack P. Gillespie; and Appraisers of Las Vegas,

Defendants.

Case No.: 2:12-cv-00893-GMN-NJK

ORDER

Pending before the Court is the Ex Parte Application for Entry of Clerk's Default (ECF No. 41), filed by Plaintiff Martin S. Rood. No opposition has been filed.

I. BACKGROUND

On May 25, 2012, Plaintiff filed his original Complaint (ECF No. 1). On August 1, 2012, Plaintiff filed Proof of Service (ECF No. 11) for the original Complaint upon Defendant Appraisers of Las Vegas, after Plaintiff's former counsel filed a Declaration (ECF No. 6), attesting to the necessity of service through the Nevada Secretary of State.

On August 21, 2012, Plaintiff filed a First Amended Complaint (ECF No. 17).

On October 16, 2012, Plaintiff filed Proof of Service upon Defendant Scoggins, stating that summons was left at Defendant Scoggins’ “residence or usual place of abode” on September 17, 2012. (ECF No. 27.) This Proof of Service does not specify which pleading was attached to the served summons – Plaintiff’s First Amended Complaint, or the original Complaint. (*Id.*)

On November 1, 2012, Plaintiff moved for service by publication upon Defendant Nelson, and on November 5, 2012, the motion was granted. (ECF Nos. 30, 31.) On January 10, 2013, Plaintiff filed Proof of Service (ECF No. 33) upon Defendant Nelson dated January 10,

2012, with an Affidavit of Publication indicating a summons date of August 22, 2012.

II. LEGAL STANDARD

Local Rule 77-1(2) provides that the Clerk may enter default for failure to plead or otherwise defend, as provided in Rule 55 of the Federal Rules of Civil Procedure. D. Nev. R. II.77-1(b). Rule 55 provides for entry of default “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a).

Rule 4 of the Federal Rules of Civil Procedure provides for the issuance of summons and methods of service for a complaint. *See* Fed. R. Civ. P. 4(e),(h). Rule 5 provides that “a pleading filed after the original complaint” must be served on every party, and that “a pleading that asserts a new claim for relief against [a party who is in default for failing to appear] must be served on that party under Rule 4.” Fed. R. Civ. P. 5(2).

III. DISCUSSION


As before, Plaintiff is correct that Defendants Nelson, Scoggins, and Appraisers of Las Vegas have failed to plead or otherwise defend in this action. However, here, clarifying the previous motion, Plaintiff’s former counsel includes a declaration that service of the First Amended Complaint was effected upon Defendants Scoggins and Nelson. Accordingly, with this declaration the Court finds that entry of default is appropriate as to Defendants Scoggins and Nelson.

Plaintiff still has not shown proof of service upon Defendant Appraisers of Las Vegas for the First Amended Complaint, and the Court’s review of the docket provides no such support. No default has previously been entered as to Defendant Appraisers of Las Vegas, and the First Amended Complaint does not appear to assert a new claim for relief. Plaintiff does not address the propriety of entry of clerk’s default as to Defendant Appraisers of Las Vegas where proof of service exists as to the original Complaint (*see* ECF No. 11), but not the First

1 Amended Complaint. Therefore, the Court finds good cause to deny Plaintiff's request without
2 prejudice, as to Defendant Appraisers of Las Vegas. Plaintiff is given leave to renew his
3 request for entry of default as to Defendant Appraisers of Las Vegas, with an accompanying
4 affidavit clarifying the grounds for the request.

5 **IT IS HEREBY ORDERED** that the Ex Parte Application for Entry of Clerk's Default
6 (ECF No. 41) is **GRANTED in part and DENIED in part**. The motion is **GRANTED** as to
7 Defendant Scoggins and Defendant Nelson, and the Clerk shall enter default as to Defendant
8 Scoggins and Defendant Nelson under the First Amended Complaint. The motion is **DENIED**
9 **without prejudice** as to Defendant Appraisers of Las Vegas.

10 **DATED** this 30th day of December, 2013.

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14 Gloria M. Navarro
United States District Judge
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